



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 31, 2003

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2003-2160

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178585.

The Allen Police Department (the "department"), which you represent, received a request for information involving a specified address during a stated time interval, including records of calls for service and related radio traffic and reports. You state that the department has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We note that this request encompasses information that did not exist on the date of the department's receipt of the request. Chapter 552 of the Government Code does not require the department to disclose information that did not exist when it received this request for information or to comply with a standing request to provide information on a periodic basis. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 476 at 1 (1987), 452 at 3 (1986).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You claim that the submitted information is confidential under chapter 58 of the Family Code. Section 58.007 of the Family Code provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We agree that the information that relates to service numbers 02-51700 and 02-52033 is confidential under section 58.007 of the Family Code. Therefore, that information, which we have marked, is excepted from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law. You have not demonstrated, however, and it is not otherwise clear to this office that any of the remaining information relates to a juvenile offender for purposes of section 58.007 of the Family Code. Therefore, none of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007.

We note, however, that section 261.201 of the Family Code is applicable to some of the remaining information. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We have marked information that consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). You do not inform this office of any rule adopted by the department that would allow the release of the marked information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.<sup>1</sup>

The remaining records also contain confidential criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI that it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI maintained by the Department of Public Safety ("DPS"), except that the DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov't Code § 411.083.<sup>2</sup> Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI from DPS. A criminal justice agency that is authorized to obtain CHRI from DPS also may obtain CHRI that is maintained by another criminal justice agency from that criminal justice agency. *Id.* § 411.087(a)(2). However, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations, and any CHRI obtained from DPS or another criminal justice agency is confidential under subchapter F of chapter 411 of the Government Code. We have marked the confidential CHRI that the department must withhold under section 552.101 of the Government Code.

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<sup>1</sup>We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

<sup>2</sup>Section 411.082(2) of the Government Code defines criminal history record information as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions."

We also note that the remaining information includes a social security number. A social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the department, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that the social security number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we note that the remaining information includes a Texas driver's license number. Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We have marked the Texas driver's license information that the department must withhold under section 552.130.

In summary, the department must withhold some of the submitted information under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code. Criminal history record information obtained from the federal government, another state, the DPS, or another criminal justice agency must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code. A social security number may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The Texas driver's license information must be withheld under section 552.130. The department must release the rest of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

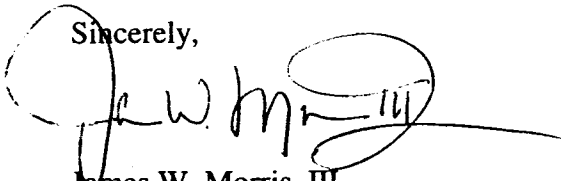
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 178585

Enc: Submitted documents

c: Ms. Judy Farmer  
915 Pebblebrook  
Allen, Texas 75002  
(w/o enclosures)